IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08/10/2003

Coram

The Honourable Mr. Justice P.K. MISRA

Writ Petition No.14909 of 1998

Aiswarya Freight Carrier
Rep. by its Prox.
E. Thiruthuva Mary .. Petitioner

-Vs-

1. Union of India,
Rep. by Secretary
to Government,
Ministry of Law,
New Delhi.

2. Escorts Finance Ltd.,
54, Montieth Road,
Egmore, Madras - 8. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issue of a Writ of Mandamus as stated therein.

For petitioner: Mr. S. N. Amarnath

For respondents: No appearance

:O R D E R

Heard the learned counsel appearing for the petitioner.

2. In this writ petition, prayer has been made for issuing a Writ of Mandamus to direct the first respondent to enforce the Hire Purchase Act, 1972. It is the case of the petitioner that the Hire Purchase Act, 1972 (Act 26 of 1972) received the assent of the President more than 30 years back but the Act has not been enforced. Section 1(3) of the Act says that the Act will come into force on such date as the Central Government may by notification in the Official Gazette appoint. It is the contention of the petitioner that the object of the Act is to define and regulate the rights and duties of the parties to hire purchase agreement on the matter connected therewith or incidental therewith and the provisions have been made with the aforesaid object in mind but the Central Government has not issued any notification for enforcing the Act. Learned counsel appearing for the

petitioner has submitted that a Writ of Mandamus should be issued to the appropriate Government directing it to enforce the Act from a particular date.

3. Learned counsel appearing for the petitioner has placed reliance upon the decision reported in AIR 1969 SC 1306 (Praga Tools Corpn. v. C.V. Imanual and others). The aforesaid decision is an authority for the proposition that a Writ of Mandamus lies to seek enforcement of a statutory or public duty imposed on the Government by a statue. However, this decision is not the authority for the proposition that the Court has got power to issue such a positive direction to the Government to issue notification to the effect that a particular statute should come into force from a particular date.

4. The next decision relied upon by the learned counsel for the petitioner is reported in AIR 1971 SC 2399 (Narinder Chand vs. U.T. Himachala Pradesh) wherein it was observed:
"The power to impose a tax is undoubtedly a legislative power. That power can be exercised by the legislature directly or subject to certain conditions, the legislature may delegate that power to some other authority. But the exercise of that power, whether by the legislature or by its delegate is an exercise of a legislative power. The fact that the power was delegated to the executive does not convert that power into an executive or administrative power. No Court can issue a mandate to a legislature to enact a particular law. Similarly no Court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact a law which it may be competent to enact. The relief as framed by the appellant in his writ petition does not bring out the real issues calling for determination. In reality he wants this Court to direct the Government to delete the entry in question from Schedule A and include the same in Schedule B. Article 265 of the Constitution lays down that no tax can be levied and collected except by authority of law. Hence the levy of a tax can only be done by the authority of law and not by any executive order. Unless the executive is specifically empowered by law to give any exemption, it cannot say that it will not enforce the law as against a particular person. No Court can give a direction to a Government refrain from enforcing a provision of law. Under these circumstances, we must hold that the relief asked for by the appellant cannot be granted".

5. This decision does not lay down High Court can give a positive direction to the Government for bringing into effect any particular Act.

6. Learned counsel for the petitioner, thereafter placed reliance upon a decision reported in AIR 1982 SC 710 (A.K. Roy vs. Union of India). The opinion expressed by the majority of the Honourable Judges has been reflected succinctly in paragraph 52. Even though the minority opinion expressed by JUSTICE GUPTA reflects a different line of thinking on this aspect, in view of the majority decision, there is no escape from the question that the Courts do not have any power to issue any specific Writ of Mandamus directing the Central Government to bring a particular Act into force with effect from a particular date.

7. Even though the decisions relied upon by the learned counsel for the petitioner did not support the proposition put forth by the petitioner, a subsequent decision of the Supreme Court in the case of Aeltemesh Rein v. Union of India reported in AIR 1988 SC 1768, even though not cited by the Bar, has some relevance. In the aforesaid Supreme Court's decision after considering the Constitution Bench's decision reported in AIR 1982 SC 710 (A.K. Roy vs. Union of India), it was observed that;

"6. The effect of the above observations of the Constitution Bench is that it is not open to this Court to issue a writ in the nature of mandamus to the Central Government to bring a statute or a statutory provision into force when according to the said statute the date on which it should be brought into force is left to the discretion of the Central Government. As long as the majority view expressed in the above decision holds the field it is not open to this Court to issue a writ in the nature of mandamus directing the Central Government to bring Section 30 of the Act into force. But we are of the view that this decision does not come in the way of the Supreme Court issuing a writ in the nature of mandamus to the Central Government to consider whether the time for bringing section 30 of the Act into force has arrived or not. Every discretionary power vested in the Executive should be exercised in a just, reasonable and fairway. That is the essence of the rule of law. The Act was passed in 1961 and nearly 27 years have elapsed since it received the assent of the President of India. In several conferences and meetings of the lawyers resolutions have been passed in the past requesting the Central Government to bring into force section 30 of the Act. It is not clear whether the Central Government has applied its mind at all to the question whether section 30 of the Act should be brought into force. In these circumstances, we are of the view that the Central Government should be directed to consider within a reasonable time the question whether it should bring section 30 of the Act into force or not. If on such consideration the Central Government feels that the prevailing circumstances are such that section 30 of the Act should not be brought into force immediately it is a different matter. But it cannot be allowed to leave the matter to lie over without applying its mind to the said question. Even though the power under Section 30 of the Act is discretionary, the Central Government should be called upon in this case to consider the question whether it should exercise the discretion one way or the other having regard to the fact that more than a quarter of century has elapsed from the date on which the Act received the assent of the President of India. The learned Attorney General of India did not seriously dispute the jurisdiction of this Court to issue the writ in the manner indicated above".

8. More than 30 years have elapsed since the Hire Purchase act was enacted. The Central Government was vested with the power to issue notification to bring into effect such Act. Even though 3 decades have passed, no notification has been issued by the Central Government. As observed in the Constitution Bench's decision, it is for the Parliament to see that the laws passed by it are enforced. That is the matter left for the legislature and a Writ of Mandamus cannot be issued directing the executive to issue notification for bringing the Act into force. However, having regard to the facts and circumstances of the case and keeping in view of the decision AIR 1988 SC 1768 Aeltmesh Rein v. Union of India, I feel it is a fit and proper case where the Writ of Mandamus should be issued to the Central

Government to consider as to whether a notification should be issued to bring into effect the Hire Purchase Act. This may be considered by the Central Government within a period of six months from the date of receipt of copy of this order. The petition is accordingly disposed of. No costs.

Index: Yes
Internet: Yes
asvm

To

Secretary
to Government,
Union of India,
Ministry of Law,
New Delhi.